

MF 95-8

Tax Type: MOTOR FUEL TAX

Issue: Disallowance of Fuel Credits Taken on the Returns

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

XXXXXX

Taxpayer

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Docket #

MCFT Permit #

RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX Taxpayer (hereinafter the "Taxpayer"), through April, 1995, when an order granting XXXXX's motion to withdraw as counsel was issued, XXXX has represented the Taxpayer in this matter since June, 1994.

SYNOPSIS: This case involves Taxpayer A, Inc., a corporation who hauled loads for-hire on Illinois highways in commercial motor vehicles during the audit period, and whose timely protest of a fuel tax audit generated assessment produced this contested case.

The Department imposed liability following a Motor Fuel Use Tax audit it conducted upon Taxpayer for the period of July 1, 1988 through December 31, 1990, and the liability is based upon adjustments the Auditor made in the quarterly Motor Fuel Tax Returns (IDR 280's) filed by Taxpayer. These adjustments are the contested issue in this case and involve the disallowance of fuel credits taken on the returns.

A hearing was initially held in this matter on June 9, 1993 and a further proceeding was conducted on June 10, 1994. Evidence was taken by way of documentary evidence and testimony. Because of common ownership and personnel, as well as a similarity of issues, it was agreed between the

parties that this hearing would be consolidated with the hearing on Taxpayer B (TAXPAYER B) NTL No. XXXXX and it was also stipulated that evidence in each matter would also apply to the Taxpayer in the other matter.1 (6/93 Tr. p. 6)

Mr. Paul Gramlich, the Department Auditor who performed the audit upon Taxpayer A, testified regarding his determinations made in the audit. (6/93 Tr. pp. 44-50) Mr. Steve Olson, the Department Auditor who performed the audit on TAXPAYER B, testified about his audit work. (6/93 Tr. pp. 36-42)

XXXXX, Office Manager, testified on behalf of the Taxpayer. XXXXX testified about certain of Taxpayer's exhibits and maintained throughout his testimony that the Taxpayers should be entitled to the fuel credits disallowed by the Auditors because the purchasers, XXXXX, had bought the fuel tax-paid. Both XXXXX, Taxpayer's agents, also testified for the Taxpayer and both emphasized they had purchased fuel for their bulk storage tanks tax-paid. XXXXX also testified to this effect. Taxpayer B, owner, also testified about Taxpayer's business practices.

Mr. Cy Henshaw, Department Special Investigator, testified about the investigation he conducted on Taxpayer B and Taxpayer A. (6/93 Tr. pp. 31-35) Mr. Henshaw testified the initial purpose of his investigation was to verify fuel receipts that Taxpayer B had presented to the Department Auditors to substantiate fuel purchase credits. Mr. Henshaw testified he discovered the fuel "receipts" were not original documents but had been fraudulently prepared by XXXXX who presented them to Taxpayer B as fuel tickets for fuel that was supposedly used in transporting product loads for Taxpayer B. (6/93 Tr. pp. 32-33) Mr. Henshaw testified that he verified that the purchase of bulk fuel made by XXXXX had been made tax-paid.

At the initial proceeding, the Department's two group exhibits were admitted into evidence (6/93 Tr. p. 8) and these are the Taxpayer B file

(Dept. Ex. No. 2) and the Taxpayer A (TAXPAYER A) file (Dept. Ex. No. 1). At this same proceeding Taxpayer introduced its Ex. Nos. 1 through 3 into the record (6/93 Tr. p. 50). At the subsequent proceeding, Taxpayer Exs. 4 through 14 were received into the record subject to the right of the Department Auditors to review them. (6/94 Tr. p. 180) As a result of this review, the Auditors prepared a revised summary analysis of tax liability (the "re-audit") that decreases the tax liability from the initial assessment. Counsel for the Taxpayer states Taxpayer does not object to the re-audit workpapers being admitted into the record, (Brief p. 10), therefore, I consider them to be admitted in this matter.

Taxpayer acknowledges a liability of \$7,789.72 for the audit period based upon reporting 38,931 gallons of fuel for credit on returns in excess of their total Illinois tax-paid purchases, both retail and bulk. (Taxpayer Ex. Nos. 1 and 8) The Department's re-audit determined that Taxpayer had a tax liability of \$8,539.00. Therefore, the tax amount in dispute is now \$749.28.

FINDINGS OF FACT:

1. Taxpayer's principle office is located in Missouri and its main operations location is Illinois. (6/94 Tr. p. 77)

2. The Taxpayer, during the audit period, was engaged in the business of hauling loads for hire on the highways, including those of Illinois. (Dept. Ex. No. 1; 6/94 Tr. pp. 78-79)

3. On September 6, 1991, the Department issued Notice of Tax Liability (NTL) No. XXXXX for \$52,581.81, inclusive of tax, penalty and interest. (Dept. Ex. No. 1)

4. During the audit period, this Taxpayer, Taxpayer A, was owned by one Taxpayer B, an individual. (6/93 Tr. p. 11; 6/94 Tr. p. 77)

5. During the audit period, Taxpayer A operated from three to five tractor trailer units. It leased, on a long-term basis, all of these units

from XXXXX Trucking. The individual XXXXX, XXXXX, are the last two survivors of several brothers who originally formed XXXXX Trucking. XXXXX also formed and owned Taxpayer A (the Taxpayer in the instant hearing) for several years before selling it to Taxpayer B prior to the audit period. (Dept. Ex. No. 1; 6/93 Tr. p. 12; 6/94 Tr. pp. 77)

6. During the audit period, Taxpayer had Illinois Commerce Commission intrastate carrier authority, but did not have interstate authority. (Dept. Ex. No. 1; 6/93 Tr. p. 11; 6/94 Tr. p. 79)

7. Taxpayer A was purchased by Taxpayer B in order to acquire its intrastate carrier authority because his own interstate long haul carrier trucking company, Taxpayer B, did not have Illinois intrastate authority. (Dept. Ex. No. 1; 6/93 Tr. pp. 9, 11)

8. XXXXX owned and operated a bulk fuel terminal and the XXXXX Trucking Company near , Illinois. He leased at least three semitractor trailer units to Taxpayer A during the audit period. XXXXX also trip-leased units to Taxpayer B, and on some trips XXXXX leased the same unit to both Taxpayer A, Inc. and TAXPAYER B as it would begin a trip under lease to Taxpayer A, but before returning home would change the truck door sign placards to say Taxpayer B, because while its first run on the trip would be an Illinois intrastate delivery (as a Taxpayer A carrier), it then would haul a load out of Illinois for interstate delivery as a TAXPAYER B carrier. (Dept. Ex. No. 1; 6/93 Tr. pp. 20-21)

9. XXXXX, who owned and operated a bulk fuel terminal and trucking company named XXXXX, Inc., at XXXXX, Illinois, leased approximately 25 semitractor trailer units to Taxpayer B in the years 1986 through 1989. (Dept. Ex. No. 1; 6/93 Tr. pp. 10-11)

CONCLUSIONS OF LAW: Section 13a.3 of the Motor Fuel Tax Law (35 ILCS 501/13a.3) sets out the following filing and fuel credit documentation requirements for motor carriers who operate in Illinois:

Every motor carrier who operates in Illinois shall, on or before the last day of the month next succeeding any calendar quarter, file with the Department a report, in such form as the Department may by rule or regulation prescribe, setting forth a statement of the number of miles traveled in every jurisdiction and in this State during the previous calendar quarter, the number of gallons and type of fuel consumed on the highways of every jurisdiction and of this State, the number of gallons and type of fuel purchased within this State during said previous calendar quarter, and which may include both gallons of fuel purchased and miles operated that were unavailable for the 2 immediately preceding calendar quarter reports, upon which a tax was paid under this Act, and such other information as the Department may reasonably require. Such other information shall include, but not be limited to, original tax paid receipts as evidence of the number of gallons purchased, which were omitted from the reports for the 2 immediately preceding calendar quarters and are now included in the current filed report.

The issue herein is the adequacy of documentation to support fuel tax credits claimed by Taxpayer on its fuel tax returns. While the Department acknowledges bulk purchases of fuel were made tax-paid by XXXXX, the problem is Taxpayer did not submit accurate records to document the withdrawal and separation of the fuel for use by its trucks as well as those running loads for TAXPAYER B. (6/93 Tr. pp. 49-50)

A bulk user of motor fuel is required by Section 12 of the Motor Fuel Tax Act (35 ILCS 505/12) to keep records that include the "...distribution and use of motor fuel".

Accurate withdrawal records showing amounts and truck unit numbers were not submitted at hearing. What were submitted were "withdrawal memos" that according to the testimony of Taxpayer's witness, were only written to estimate an amount of fuel that might approximate some mileages run. (Taxpayer Ex. Nos. 4A-4C)

In the re-audit, the Auditor allowed a percentage of 92.4% of the bulk purchases as credits based upon a detailed comparison of bulk purchases against withdrawals for the months of April 1991 through December 1992. (Re-Audit Schedules B1 and C1) I find this to be a reasonable procedure and result considering there is evidence in the record that certain drivers had keys to the terminals and could have gained access to fuel anytime

during the 24-hour day (6/94 Tr. p. 39), and each XXXXX brother traded fuel with each other without accurately tracking or accounting for it. (6/94 Tr. pp. 64, 73, 163)

Based upon my review of the record, I recommend the NTL be reduced and finalized in accordance with the re-audit results.

RECOMMENDATION: Based upon my aforementioned findings of fact and conclusions of law, I recommend the Department reduce NTL No. XXXXX and issue a final assessment.

Respectfully Submitted,

Karl W. Betz
Administrative Law Judge

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1. References to the June, 1993 hearing proceeding are denoted by "6/93" and references to the June, 1994 proceeding are denoted by "6/94".